

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOSHUA G. FRANKLIN, SR.,

Plaintiff,

vs.

DIANE SABATKA-RINE, Deputy
Director, In her Individual and Official
Capacity; FRED BRITTEN, Warden, In
his Individual and Official Capacity;
CURT WEES, Unit Administrator, In
his Individual and Official Capacity;
MCCLYMONT, Case Manager;
DENNIS BAKEWELL, and CHARLES
RINE,

Defendants.

8:16CV470

**MEMORANDUM
AND ORDER**

This matter is before the court on Nebraska Assistant Attorney General Timothy R. Ertz's, attorney of record for Defendants, Suggestion of Death of Defendant Fred Britten. ([Filing No. 44.](#)) Counsel represents to the court that Defendant Britten died on or about July 19, 2017. (*Id.*) Counsel mailed the Suggestion of Death to Plaintiff on July 28, 2017. (*Id.*)

Unless Plaintiff is able to comply with [Federal Rule of Civil Procedure 25\(a\)\(1\)](#)¹ by October 30, 2017, Plaintiff's claims against Defendant Britten in his individual capacity will be dismissed. *Cf.* [Fed. R. Civ. P. 25\(d\)](#) ("An action does

¹ "If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." [Fed. R. Civ. P. 25\(a\)\(1\)](#).

not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending”).

IT IS THEREFORE ORDERED that:

1. Plaintiff will be permitted until **October 30, 2017**, in which to file an appropriate motion for substitution or Plaintiff’s claims against Defendant Britten in his individual capacity will be dismissed.

2. The clerk’s office is directed to set a pro se case management deadline with the following text: **October 30, 2017**: check for Plaintiff’s motion for substitution.

Dated this 2nd day of August, 2017.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge